



DON'T TAX YOU. DON'T TAX ME. TAX THAT FELLOW BEHIND THE TREE.*

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Editor's Note

Wow. That was fast. Less than eight hours after being rolled out, the Billionaires Income Tax ("BIT") was "dead on arrival" (in Washington DC parlance).¹ As the reader knows, CMTQ has been covering various derivative mark-to-market proposals for many years, so we weren't surprised in August to see Sen. Ron Wyden (D., OR), Chairman of the Senate Finance Committee introduce his "Modernization of Derivatives Act" or MODA, paving the way for it to be included as a "pay for" in the reconciliation bill. We have also been reporting on various tax-raising proposals aimed at wealthy taxpayers since 2019, when Sen. Wyden floated one.² Then, during the 2019-2020 Democratic Party primary season we reported on a wealth tax aimed at the super wealthy when Sen. Elizabeth Warren (D., Mass.) proposed it as part of her presidential campaign. This Fall, in the final weeks of the march toward a reconciliation bill "framework", we saw the two concepts (MTM and a focus on only the wealthiest taxpayers) coalesce in the BIT.

The BIT is really a super mark-to-market tax.³ It would treat a taxpayer's "tradable" assets as being sold at the end of each taxable year. Any resulting gain would be included in the taxpayer's gross

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¹ See Laura Davison and Laura Litvan, Democrats Clash on Billionaire Tax as Neal Rejects Senate Plan (October 27, 2021), available at <https://www.bloomberg.com/news/articles/2021-10-27/billionaires-levy-out-millionaires-surtax-on-table-neal-says>.

² Our prior coverage is available at <https://www.mayerbrown.com/en/perspectives-events/publications/2020/01/capital-markets-tax-quarterly>.

³ The BIT would add sections 491-494 to the Internal Revenue Code of 1986.

income and generally treated as long-term capital gain. MTM losses could be carried back three years but could only be used against MTM gains. Non-tradable assets would be subject to an interest charge when the asset is sold that treats the gain, if any, as occurring during the taxpayer's holding period, à la the passive foreign investment company ("PFIC") rules.

The reason more rank and file taxpayers are not concerned about this concept is that the proposed tax would only apply to taxpayers with assets worth more than \$1 billion or income greater than \$100 million over a three-year test period. Sen. Wyden's press release estimates that group at 700 people. The effective date would have been taxable years beginning after 2021. The provision was estimated to raise "hundreds of billions of dollars."⁴ The Washington Post estimated that roughly half the BIT would be paid by 10 individuals.⁵

Senator Wyden released the 107-page draft of the BIT on Wednesday, Oct 27. Later in the day, Senator Joe Manchin (D., WV) said he did not "like the connotation we are targeting different people." Across the Capitol, Rep. Richard Neal (D., Mass.), Chairman of the House Ways & Means Committee, said it would be "challenging" to implement. By that evening, the proposal was on life support. When the Biden Administration announced its "framework" for the reconciliation package ("Framework") on Thursday, Oct 28, the BIT was not in the list of revenue raisers.

There still could be a little time (or a long time, CMTQ cannot tell) for further negotiations on the reconciliation bill before it proceeds, if it does. And, as we have warned our readers many times, anything can happen in the legislative process. Therefore, we all await further developments on mark-to-market and the BIT. Hopefully, in the next CMTQ we can report on the exact provisions that Congress will use to pay for reconciliation (assuming it happens) and how, if at all, they affect the capital markets.⁶

In this issue of CMTQ we also cover certain REIT-related items in the current legislative effort, the settlement of one of the two "basket option" cases, and more.

4 The press release from Sen. Wyden is available at <https://www.finance.senate.gov/chairmans-news/wyden-unveils-billionaires-income-tax>.

5 Jeff Stein, Andrew Van Dam and Tony Romm, Democrats' Billionaire Tax Would Heavily Target 10 Wealthiest Americans, But Alternative Plan is Emerging, Washington Post, October 26, 2021, available at <https://www.washingtonpost.com/us-policy/2021/10/26/billionaire-tax-dems-biden/>. The article notes that the Washington Post is owned by one of the ten individuals: Amazon founder Jeff Bezos.

6 Revenue raisers in the Framework currently include, among others, (i) a new 15% corporate minimum tax on large corporations, (ii) a 1% tax on stock buybacks of publicly traded corporations, (iii) a 5% surtax on taxable income above \$10 million per year for joint filers plus another 3% surtax on adjusted gross income above \$25 million a year again for joint filers and (iv) an extension of the 3.8% Medicare tax to certain trade or business income.

Renaissance Settles “Basket Option” Case

After years of dispute with the Internal Revenue Service (the “IRS”), hedge fund Renaissance Technologies (the “Fund”) settled with the IRS on taxes relating to option contracts entered into between 2005 and 2015.⁷

In essence, the Fund entered into nonrecourse option contracts which returned the value in an underlying basket of security positions. While each option contract remained open, the Fund had control over, and frequently altered, the composition of the underlying basket of securities. If an option contract was held for more than one year, the Fund would report gain on such contract as long-term capital gain.

The IRS, however, argued that for US federal income tax purposes, the option contracts themselves should be disregarded and that the Fund should be treated as having effectively held direct interests in the underlying securities. Thus, the IRS asserted that any gains attributable to such option contracts should be subject to short-term capital gains treatment to the extent any position in an underlying security was held for a period of one year or less.

In a letter dated September 2, 2021, the Fund informed investors that the decision to settle with the IRS was to protect investors’ interests and resolve the dispute on the best possible terms. CMTQ has been tracking another case with very similar facts, *GWA, LLC v. Commissioner*, which is scheduled for trial in the US Tax Court in March 2022. As with the option contracts entered into by the Fund, the partnership in the GWA, LLC case similarly entered into option contracts that returned the value in an underlying basket of securities. Assuming the GWA, LLC case does not settle, a tax court opinion may set forth additional guidance on basket option contracts, which the IRS has previously targeted in Notices 2015-73 and 2015-74. CMTQ remains interested to see what impact, if any, the tax court’s opinion may have on certain structured products based on “bespoke” indices.

Reconciliation and REITs

In September 2021, the US House of Representatives Ways and Means Committee passed sweeping legislation known as the “Build Back Better Act” (the “BBBA”). The Mayer Brown Tax Group released a detailed overview of the tax provisions contained in the BBBA.⁸ The original BBBA included two specific provisions affecting REITs; however, the BBBA released on October 28 in conjunction with the Framework contains only one REIT-specific provision. Specifically, the BBBA would put an end to the prison REIT industry, at least tax-wise. Effective for taxable years beginning after December 31, 2021, the proposal would amend Code section 856(d)(2) by adding to the list of amounts excluded from

⁷ Gregory Zuckerman and Richard Rubin, James Simons, Robert Mercer, Others at Renaissance to Pay Up to \$7 Billion to Settle Tax Probe, September 2, 2021, available at <https://www.wsj.com/articles/james-simons-robert-mercer-others-at-renaissance-to-pay-7-billion-to-settle-tax-probe-11630617328>.

⁸ The Legal Update with our detailed overview is available at <https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2021/09/build-back-better-tax-proposals-approved-by-the-house-ways--means-committee2.pdf>

the definition of “rents from real property” any amounts received or accrued, directly or indirectly, with respect to any real or personal property which is primarily used in connection with any correctional, detention, or penal facility. The BBBA approved by House Ways & Means made a taxpayer favorable amendment to the REIT constructive ownership rules, but that was removed in the latest version.

As mentioned above, Senator Wyden’s latest iteration of the Modernization of Derivatives Act (“MODA”),⁹ or a derivative thereof (pun intended), had been talked about as a “pay-for” that could be added to the reconciliation bill.¹⁰ Under the latest iteration of MODA, a taxpayer would generally be required to mark-to-market all derivatives for tax purposes, and any mark-to-market gains or losses would be treated as ordinary. The latest proposal defines derivatives broadly, including debt instruments with embedded derivatives. This of particular concern for mortgage REITs. With respect to a prior version of MODA on which the latest version is based, real estate associations such as the National Association of Real Estate Investment Trusts and the Mortgage Bankers’ Association wrote to Congress questioning whether this definition includes mortgage-backed securities subject to prepayment risk and “to-be-announced,” commonly known as “TBA,” mortgage purchase contracts. In addition, MODA could result in mismatches of timing and character for certain mortgage REIT hedging transactions. As discussed, as of press time, this provision was not in the latest version of the BBBA.

IRA Investment Restrictions in Proposed Legislation—No More Private Placements in IRAs?

Also on the BBBA, the legislation passed by House Ways and Means included a provision that would bar individual retirement accounts (“IRAs”) from holding securities that require investors to make representations regarding certain levels of income, assets, education or credentials, including securities that were issued in a “private placement.” Certain securities are exempt from public registration because they can only be offered to “accredited investors,” which include individuals that earn at least \$200,000 per year or have a net worth of over \$1 million. These “private placement” securities can include investments in private equity funds, hedge funds, and other investments that are not available to the public generally. One popular tax strategy that has come under scrutiny lately is the purchase of private placement securities through a self-directed IRA account. Individuals with self-directed IRA accounts can buy and sell private placement securities without being subject to current tax. Furthermore, self-directed Roth IRAs allow individuals to invest in private placement securities with after-tax dollars, in which case gains from the sale of the private placement securities

⁹ Sen. Wyden has also on several occasions proposed mark-to-market systems that would apply to derivatives. For our previous coverage of Sen. Wyden’s mark-to-market proposals, see Capital Markets Tax Quarterly Volume 2, Issue 3:

<https://www.mayerbrown.com/en/perspectives-events/publications/2019/10/capital-markets-tax-quarterly>.

¹⁰ The BBBA is technically a part of the budget reconciliation process, meaning that any revenue spending pursuant to the legislation must generally be revenue raising.

may be exempt from federal income tax entirely if certain requirements are met. Recent media reports have highlighted tech investors that used Roth IRAs to buy stock of startup companies at low prices and sold their investments for astronomical returns that are permanently exempt from federal income tax.

The House Democratic plan was aimed, in part, at this practice. Under the previous version of the BBBA, an IRA would lose its status as an IRA if it held any security that that requires the IRA's owner to have certain minimum levels of assets or income, have a certain level of education or a specific license or credential. This would include private placements to accredited investors. Although the section would take effect beginning in 2022, a two-year transitional rule would apply to any IRAs that already held such investments. Given their nature, private placement securities can be far less liquid than their publicly traded counterparts. This has led some to question whether a two-year transition period is enough to allow IRA owners to find buyers at a fair price. Although this provision was not in the latest version of the BBBA, as we know, Congress can always recycle material, so there is a possibility this provision could resurface as the BBBA moves forward (or could reappear down the road).

Singapore Considering Wealth Tax but Consults the Wealthy First

Singapore's government has been soliciting feedback on its tax regime, including consulting wealthy individuals on wealth taxes, as the conversation continues to grow around this potentially sensitive topic. Like many governments around the world, Singapore has been grappling with how to combat inequality that is being deepened by the COVID-19 pandemic.

Although Singapore's Ministry of Finance said that it regularly consults academics, industry professionals and analysts on different aspects of fiscal policy, such discussions have appeared to expand following comments made by Monetary Authority of Singapore Managing Director Ravi Menon that a wealth tax could tackle the wealth inequality in Singapore. Specifically, on July 22, 2021 at an Institute of Policy Studies lecture, Ravi Menon suggested that Singapore may need a property gains tax or an inheritance tax to address wealth inequality in the country. That speech generated further conversations on the topic, with multiple commentaries in local media discussing the need and impact of wealth taxes.

Government officials have been seeking feedback on the country's tax regime, including having conversations on wealth taxes with members of Singapore's business elite and advisors to the wealthy to gauge their reactions and understand concerns. According to Bloomberg, Singapore is taking a cautious stance as the issue of a wealth tax has the potential to upset the country's wealthiest families and put off wealthy foreign investors.¹¹ Singapore's low taxes and stability have

¹¹ See Faris Mokhtar and Joyce Koh, Singapore is Said to Canvass Wealth Circles on Tax Ideas, Bloomberg (October 7, 2021), available at <https://www.bloomberg.com/news/articles/2021-10-07/singapore-is-said-to-canvass-wealth-circles-on-tax-ideas>

historically attracted some of the world's wealthiest individuals, including Facebook co-founder Eduardo Saverin and Dyson founder James Dyson, making the country a center for private banking, family offices and asset management.

Responding in parliament in February to suggestions from lawmakers for a wealth tax and higher levies for more expensive real estate, Deputy Prime Minister Heng Swee Keat highlighted the need to stay competitive while making sure wealth tax systems are effective. More recently, on October 15, 2021, Singapore's Minister of Finance Lawrence Wong stated that Singapore needs to guard against rising inequality and is currently studying options to expand its system of wealth taxes. At present, there are no concrete plans for how any wealth tax might be structured or when it would be unveiled, if at all.

What's New? – IRS Releases Revised Forms W-8

In late August and early September, the IRS published early release drafts of Forms W-8ECI, W-8IMY and W-8BEN-E and their corresponding instructions. The new Forms reflect several updates intended to incorporate recent changes in the tax law and simplify certain steps that oftentimes resulted in taxpayer confusion when completing these forms.

Forms W-8ECI, W-8BEN, and W-8BEN-E have been finalized with a revision date of October 2021. Withholding agents may continue to accept the prior version of these forms until May 1, 2022 (unless the IRS issues guidance extending such time).¹² As of the date of this publication, Form W-8IMY remains in draft form. Once the draft Form W-8IMY has been published as a final version, withholding agents should then determine the length of time permitted to continue to accept the June 2017 version of Form W-8IMY.

Following, we briefly discuss the most relevant changes from a capital markets perspective.

Form W-8BEN-E: Generally, a taxpayer is required to provide a Form W-8BEN-E to a withholding agent or payer if the taxpayer is a foreign entity receiving a withholdable payment, receiving a payment subject to chapter 3 withholding, or if it is an entity maintaining an account with a foreign financial institution (as defined for FATCA purposes) requesting this form. Taxpayers completing the 2021 Forms should be aware of the following changes to Form W-8BEN-E:

- A new checkbox has been added on line 9c asking taxpayers to "check if FTIN not legally required".
- A new checkbox has been added on line 14b for non-US persons claiming the benefits of a tax treaty that reside in jurisdictions that do not impose limitation on benefits requirements to qualify for reduced rates or exemption from withholding.

¹² Treas. Reg. 1.1441-1(e)(4)(viii)(C).

Form W-8ECI: Generally, a taxpayer is required to provide a Form W-8ECI to the withholding agent or payer if it is a foreign person and beneficial owner of US source income that is (or is deemed to be) effectively connected (ECI) with the conduct of a trade or business within the United States or are an entity (including a foreign partnership or foreign trust) engaged in a US trade or business submitting this form on behalf of its owners, partners, or beneficiaries. Taxpayers completing the 2021 Forms should be aware of the following changes to Form W-8ECI:

- A new checkbox has been added on line 4 asking taxpayers to identify if the entity is an “integral part” or a “controlled entity” of a foreign government.
- Similar to the changes to Form W-8BEN-E, a new checkbox has been added on line 9c asking taxpayers to “check if FTIN not legally required.”
- A new checkbox has been added on line 12 asking a dealer in securities that is transferring an interest in a publicly traded partnership (PTP) and is claiming an exemption from withholding under section 1446(f) to certify this status. The taxpayer is also required to determine whether any gain from such a transfer is effectively connected with the conduct of a trade or business within the United States without regard to section 864(c)(8).

Form W-8IMY: Generally, a taxpayer is required to provide a Form W-8IMY when receiving a reportable amount or withholdable payment on behalf of another person or as a flow-through entity. Taxpayers completing the 2021 Forms should be aware of the following changes to Form W-8IMY:

- Part I: A new line has been added to 9b for taxpayers to include their FTIN, if required.
- Part III: Several changes have been made to the Qualified Intermediary (QI) certifications:
 - Line 14a now includes a statement that the QI will provide documentation required for Code sections 1446(a) and 1446(f), as required.
 - New Line 15b now allows a QI to certify that it is assuming all withholding responsibilities for transfers of PTP interests for Code section 1446(f) purposes.
 - New Line 15c now allows a QI to certify that it is acting as a nominee for section 1446 purposes for a distribution by a PTP.
 - The IRS also modified the certification in Line 15d so that a QI acting as a qualified securities lender certifies that it is assuming primary withholding and reporting responsibilities with respect to payments that are US source substitute dividends received from the withholding agent associated with each account identified on a withholding statement attached to this form (or, if no withholding statement is attached to this form, for all accounts).
- Part IV: The Non-Qualified Intermediary (NQI) certifications were also updated in Line 17e so that NQIs can make the required certification that it does not have information in its files that conflicts with the information provided on an alternative withholding statement.

- Part V: Several changes have been made to the Territory financial institution (FI) certifications:
 - Line 18d was updated to reflect changes to Code section 1446(f) and to allow a territory FI to certify that it agrees to be treated as a US person in respect of amounts realized upon the sale of a PTP interest.
 - New Line 18e also allows a territory FI to agree to be treated as a US person under section 1441 and as a nominee with respect to distributions by PTPs.
 - Line 18f allows the territory FI to certify that it is not acting as nominee for distributions from PTPs and is providing a withholding statement for the distributions.
- Similar conforming changes to those described for Part V were made in respect of US branch certifications (Part VI) and Non-Withholding Foreign Partnership Certifications (Part VIII) in respect of their withholding and reporting obligations pursuant to Code sections 1441 and 1446(f).

In addition, the instructions to all draft Forms W-8 now state that a foreign seller of a life insurance contract (or interest therein) or a recipient of a reportable death benefit for purposes of reporting under Code section 6050Y is required to provide a Form W-8.

Notice 2021-51: Further Delay of Withholding Regulations Under Section 1446(f)

Code section 1446(f) generally requires a transferee of a partnership interest to deduct and withhold a tax equal to 10% of the amount realized on the disposition of such interest if any portion of the gain would be treated as effectively connected with the conduct of a trade or business within the United States. Effectively, withholding under Code section 1446(f) is an enforcement mechanism for liability imposed under Code section 864(c)(8). Final regulations were released in October 2020 which provided rules for withholding on the transfer of partnership interests, including partnerships that are “publicly traded partnerships” (“PTPs”) and those that are not.¹³ The final regulations included a delayed effective date for transfers of PTP interests, with the regulations only applying to transfers occurring on or after January 1, 2022. In addition, withholding required by partnerships on distributions made to transferees that otherwise fail to withhold under Code section 1446(f) was only applicable to transfers occurring on or after January 1, 2022. At the end of summer, the IRS released Notice 2021-51, deferring the effective date for these provisions from January 1, 2022 to January 1, 2023.

¹³ For a detailed discussion of the final regulations, see our client alert, available at <https://www.mayerbrown.com/en/perspectives-events/publications/2020/10/irs-releases-final-withholding-tax-regulations-on-sales-of-partnership-interests>

Capital Markets Highlights in IRS Priority Guidance Plan

On September 9, 2021, the IRS released its annual priority guidance plan for the coming year. The 2021-2022 priority guidance plan doesn't contain much new from the 2020-2021 priority guidance plan that is of particular interest to the capital markets. In fact, the "Financial Institutions and Products" section of the guidance plan is identical to the plan from last year. Still, it is worth pointing out a few items in the guidance schedule that taxpayers and their advisers can remain excited for, including:

- Guidance addressing issues relating to mark-to-market accounting under Code section 475;
- Guidance regarding application of the cure provisions under Code section 851(i) for regulated investment companies and Code sections 856(c)(7) and (g)(5) for REITs;
- Guidance clarifying the definition of income in Code section 856(c)(3) for purposes of the REIT qualification tests (a line item which has been around since 2014, explained by an IRS official to be a project focused on defining what are "good" rents from real property for REIT purposes);
- Guidance under Code section 1001 on the elimination of interbank offered rates (for which regulations were originally proposed in October 2019);¹⁴ and
- Guidance on the treatment of fees relating to debt instruments and other securities.

In terms of timing, CMTQ observes that many of the items currently on the priority guidance plan for 2021-2022 could get put on the back burner if the Building Back Better legislation is enacted. We saw this most recently with the tax reform brought on by the Tax Cuts and Jobs Act, where the IRS spent more than three years proposing, revising, and finalizing regulations for the rules created under the TCJA. A similar effort could be required again.

In the News

RECENT RECOGNITION

- Mayer Brown [named](#) **European Law Firm of the Year for transactions** at the *GlobalCapital* Global Derivatives Award 2021 for a second consecutive year.

¹⁴ For a detailed summary of the proposed regulations, see our client alert, available at <https://www.mayerbrown.com/en/perspectives-events/publications/2019/10/the-worlds-most-important-number-the-irs-addresses-the-replacement-of-libor>

- **NPX's First "Pay-for-Success" Financing Exceeds Impact Targets, 9/30/2021**
PR Newswire recognizes Anna Pinedo for developing NPX's first of its kind "Pay-for-Success" financing structure, known as the Impact Security, is a proprietary financial product.
- **CFOs Review Impact of Higher Taxes on Cash Flows, Spending and Overseas Businesses, 9/27/2021**
Remmelt Reigersman weighs in on finance chiefs reviewing potential impact of higher tax proposals on interest expenses in the *Wall Street Journal*.
- **Mayer Brown and partner Brian Kittle recognized at ITR Americas Tax Awards 2021**
Mayer Brown advised on a transaction named an "Impact Deal of the Year" at International Tax Review's 16th annual Americas Tax Awards. In addition, New York partner Brian Kittle, co-leader of the firm's Tax Controversy Practice, was named "Practice Leader of the Year" in the North America Tax Litigation and Disputes category.
- **Goodwin, Gibson Dunn steer trading platform Forge's SPAC merger, 9/13/2021**
Reuters notes Mayer Brown's representation as placement agents on Forge's SPAC merger.
- **IFLR names Marla Matusic a 2021 "Rising Star" in the Capital Markets: Debt & Equity category, 9/2/2021**
- **Deal Watch: European Deals Take Center Stage, 8/23/2021**
The American Lawyer takes note of Mayer Brown advising the placement agents on the Hagerty SPAC deal.
- **Deal Watch: Square Strikes Big Down Under, Robinhood's IPO and a SPAC Comeback, 8/2/2021**
The American Lawyer takes note of Mayer Brown advising the placements agents on Vacasa's PIPE financing deal.
- **Law firm trio advise on \$4.5 billion vacation rental SPAC deal, 7/29/2021**
Reuters acknowledges Anna Pinedo and Brian Hirshberg as TPG Solutions' capital markets advisers on the \$4.5 billion vacation rental SPAC deal.

RECENT SPEAKING ENGAGEMENTS

Upcoming - [Pocket MBA 2021: Finance for Lawyers and Other Professionals](#) | Addressing current topics in finance, an experienced and diverse group of professionals will cover a broad overview of finance and practical legal considerations that emerge in the business world. The program will also discuss the ethical issues that attorneys face when dealing in the business world, diving into the rules of ethics for discovery, privileged communication, and disclosure obligation. As Program Chairperson, Anna Pinedo will deliver the conference's opening remarks on day one. Immediately after, she will join the panel, "Accounting Fundamentals," addressing accounting fundamentals and core concepts;

basics of revenue recognition rules and their application under illustrative scenarios; recent developments in accounting standards; and main differences among a financial statement audit, a “review” of financial statements engagement, and a compilation engagement. Anna Pinedo will also participate in the “*Investment Banking Basics: Fundamentals of Capital Structures*” panel, covering common financing alternatives, liquidity, finding the Optimal Capital Structure, and current marketplace developments. Also, Corina Cercelaru, will participate on the panel, “*Regulatory and Legal Compliance in International Business & Trade*,” providing an overview of prevalent threats companies face today, as well as cross-border enforcement landscape and developments. [Register for the November 18 – 19, 2021 conference here.](#)

Upcoming - [2021 US ECM Roundtable: SPACs at a Crossroads](#) | Hosted by International Financing Review (IFR), the 2021 US ECM Roundtable brings together a panel of senior industry professionals to evaluate the current state of play within the market. The Roundtable, SPACs at a Crossroads, will be moderated by IFR’s US Editor, Stephen Lacey, and the panel will feature Anna Pinedo. Specifically, they will examine questions including: How have SPAC IPO terms changed over time? What are the implications of “Bring Your Own Buyer” and back-end funding/redemptions for a merger? Where does the SEC stand on its new accounting treatment for SPAC warrants? Is the accounting treatment fair? What are the implications, if any, on SPAC funding? What are the plaintiffs alleging in the recent spate of lawsuits against certain SPACs? and more. [Register here for the November 17, 2021 session.](#)

Upcoming - [Preparing for the 2022 US Proxy and Annual Reporting Season](#) | Companies will have to weigh various considerations this upcoming proxy season, including the objectives of new leadership at the SEC, reporting obligations relating to human capital and ESG matters, and, of course, discussing in various contexts the ongoing effects of the COVID-19 pandemic in a company’s filings. On November 15, 2021, Jennifer Carlson, Laura Richman, and Christina Thomas will be joined by Brigid Rosati of Georgeson, to address issues impacting the 2022 proxy season. Topics will include, among others: Shareholder Proposals, ESG matters, Human Capital Management; Board Diversity Virtual Meetings, Say-on-Pay, Compensation Disclosures, and more. [Register here for the session.](#)

Upcoming - [Direct Listings: Experience or New Paradigm?](#) | Due to market structure and regulatory changes, the traditional capital-raising path for entrepreneurial companies has evolved. For companies in certain sectors, the firm commitment IPO may no longer be the goal. Successful direct listings have led many to consider this approach as an alternative. But is it an alternative appropriate for a broad array of companies, or best-suited to tech unicorns? During this session on November 3, Anna Pinedo, Ashley MacNeill of Morgan Stanley, and Jeff Thomas of Nasdaq will discuss the basics of a direct listing; legal requirements, timing, and costs compared to an IPO; the marketing process, market-making, and liquidity; the stock exchange rules; and capital-raising in connection with a direct listing. [Register here for the session.](#)

Upcoming - [Financing Alternatives for Banks](#) | During this webinar, we will provide a recap of recent capital markets activity by banks. We will discuss some of the regulatory developments that are impacting, and will continue to impact, issuances by financial institutions. Brad Berman and RBC Capital Markets’ Anthony Ragozino will discuss current issues and trends in the market; various

offering alternatives, including Rule 144A offerings, Section 3(a)(2) offerings, and SEC registered offerings; regulatory developments affecting issuances, including bail-in requirements, as well as TLAC and LCR requirements; disclosure requirement and practices for exempt offerings; and other considerations. [Register here for the October 27, 2021 session.](#)

[Embracing the Certainty of Change](#) | TEI hosted its 76th Annual Conference on October 24-27. Several Mayer Brown partners participated on panels throughout the conference including Jenny Austin, "Collateral Consequences of Global Transfer Pricing Disputes;" Paul DiSangro, "US International Tax Controversies: Procedural and Substantive Developments;" Mike Lebovitz – "What Is ESG and Why It Matters to Corporate Tax Departments;" and Zal Kumar, Leah Robinson – "State Tax Consequences of Recent Federal Legislation."

[Good Corporate Hygiene Part 2: Back to Basics](#) | In this second of our two-part series on October 21, 2021, Laura Richman and Christina Thomas discussed earnings guidance, forward-looking information, the SEC's earnings per share enforcement initiative, related person transactions, corporate governance documents, and more.

[Tax Strategies for Corporate Acquisitions, Dispositions, Spin-Offs, Joint Ventures, Financings, Reorganizations & Restructurings 2021](#) | The *Practising Law Institute* hosted a three-day program from October 20, 2021 to October 22, 2021.. The conference was comprehensive and insightful on corporate tax, where the latest information, strategies and practical insights were made available from leading experts. Thomas Humphreys joined the October 21 panel, "*Interesting Corporate Transactions of the Past Year*," to discuss recent M&A transactions, including the impact on recent transactions of the 2017 Tax Act and related regulatory guidance, as well as the impact of the more recent tax law changes in response to the COVID-19 crisis and potential future tax law changes.

[Advanced Swaps and Other Derivatives 2021](#) | The *Practicing Law Institute* hosted a conference from October 19 to October 20, where Curtis Doty and Mark Leeds each spoke. Curtis Doty participated on the panel, "*Enforcement Trends, Litigation, Insolvency and Resolution Authority: Safe Harbors; Orderly Liquidation*," where they reviewed recent cases of interest to the OTC derivatives market. Mark Leeds participated on the panel titled, "*Derivatives Taxation*," addressing the application of the new limitations on the deductibility of interest (Section 163 (j)); tax issues presented by IBOR replacements; and provided an overview of how the base erosion and anti-avoidance tax impacts derivative and funding transactions entered into by financial institutions.

[Fundamentals of Swaps & Other Derivatives 2021](#) | The *Practicing Law Institute* hosted a conference on October 18, 2021, which featured Curtis Doty on the panel, "*Regulatory Fundamentals*," where he discussed regulated statuses; regulated "utilities" and services providers, such as clearinghouses and futures commission merchants; and extraterritorial issues.

[Mitigating Dilution associated with Convert Issuances Through Derivatives](#) | On October 14, 2021, Anna Pinedo and Remmelt Reigersman, and Founder and CEO of J. Wood Capital Advisors, Jason Wood, and Managing Director at J. Wood Capital Advisors, Greg Batista, addressed the various strategies that issuers deploy to mitigate equity dilution associated with the issuance of convertible

notes, including call spreads, capped calls, and related structures. Specifically, they covered convertible notes and related issuer equity derivatives; the pros/cons of entering into a call spread or capped call; differences between call spreads and capped calls; tax considerations, including transaction integration and implications; securities and disclosure considerations; and unwinding a call spread or capped call in connection with a conversion, exchange, or repurchase of convertible notes or other liability management transaction or in connection with M&A.

[Public Private Partnerships - From Start to Finish](#) | On October 13-15 the National Association of Bond Lawyers hosted "The Workshop: Hybrid 2021". Partners Steven Garden and Stephanie Wagner presented on public private partnerships.

[How to Exit the US Public Markets and Options for US-Listed Chinese Companies](#) | Hosted by the *Practising Law Institute* on October 13, 2021, Jason Elder and Christina Thomas explained the details of the Holding Foreign Companies Accountable Act, how it potentially impacts US-listed Chinese companies, and options and mechanics for US-listed Chinese companies to exit the US public markets. Specifically, they addressed recent SEC guidance and public statements, take-private transactions, delisting from the NYSE and Nasdaq, deregistering securities registered with the US SEC, secondary (to primary) listings in Hong Kong, and what is next for issuers facing uncertainties.

[SPACs: Up, up, and...away?](#) | On October 7, Anna Pinedo was joined by guest speakers, Professor Joseph Grundfest, W. A. Franke Professor of Law and Business and Senior Faculty, Rock Center for Corporate Governance at Stanford Law School; former Commissioner of the SEC, Bill Cohen, bestselling author and financial journalist; and Keith Canton, Managing Director and Head of Private Capital Markets at J.P. Morgan. The panel provided a market overview of SPACs, and also discussed regulatory and potential legislative developments, as well as recent litigation.

[SEC & FASB Developments](#) | Hosted by *Intelligize* on September 29, 2021, this webinar focused on recent developments and trends with the SEC and FASB. Anna Pinedo and Brian Hirshberg, alongside Ernst & Young managing director, Polia Nair, examined the SEC's amendments to MD&A and financial disclosure requirements; experience with early adoption of the amendments; disclosure requirements related to liquidity and critical accounting estimates; areas of frequent SEC Staff comment on MD&A; SEC's amendments to Form 10-K; KPIs and non-GAAP measures, SEC Staff comments, and enforcement actions; and Subpart 1400 of Regulation S-K.

[SRP Americas Conference](#) | Mayer Brown was proud to sponsor the 2021 SRP Americas Conference, a three-day virtual conference bringing together structured products and annuities market participants for a series of timely panels. On the second day of the conference, Brad Berman, Anna Pinedo and Remmelt Reigersman were joined by Brad Busscher, Chief Administrative Officer and General Counsel at InspereX, where they spoke on a panel discussion addressing recent regulatory, compliance and tax developments.

[Pocket MBA 2021: Finance for Lawyers and Other Professionals](#) | From September 27 to 28, the *Practising Law Institute* hosted this event which featured Jennifer Carlson as a speaker and as the Program Chairperson. From financial statements to economic concepts in litigation, this program

took a broad overview of finance and the practical legal considerations that emerge in the business world. Jennifer Carlson participated on the “*Accounting Fundamentals*” panel, addressing core concepts and the basics of revenue recognition rule, recent developments in accounting standards, and main differences among a financial statement audit, a “review” of financial statements engagement; and a compilation engagement. She also participated in the “*Investment Banking Basics: Fundamentals of Capital Structures*” panel, covering common financing alternatives, sources of funding, liquidity, and marketplace developments.

[Alternative Finance Summit 2021: Fintech, Blockchain and Crowdfunding](#) | Hosted by the *Practising Law Institute*, this conference featured leading industry lawyers, dealmakers, and regulators on what is happening now and what is to come for investors. Anna Pinedo spoke on the September 22 panel, “*Getting Back to Work After COVID-19: Securities Offering and Private Placement Developments*,” where she addressed the impact of COVID-19 on offerings and placements; the COVID-19 Aid and Lending Program aftermath; abandoned IPOs, late-stage capital-raising and integration; SEC guidance on SPACs; the SEC rule changes regarding integration; and legislative and regulatory developments.

[International Financial Law Virtual Conference](#) | On September 22, 2021, the International Bar Association hosted a conference featuring a panel featuring Esther Chang of Mayer Brown LLP; Chuba Ezenwa of Citigroup; Raaj Narayan of Wachtell, Lipton; Rosen & Katz; and Will Pearce of Davis Polk & Wardwell. The conference’s panel provided a SPAC primer and addressed recent developments and market trends.

[IBOR Transition: An Introduction to Conduct Risk](#) | As part of the IBOR Transition series, this event was led by Marlon Paz, and featured David George, on September 16, 2021. The panel provided an overview of conduct risk and its importance during Q4 2021 to ensure orderly transition, and also discussed a framework to assist with risk mitigation.

[SOFR Deals](#) | During this September 13 session, Brad Berman, Ryan Castillo, and Jerry Marlatt discussed Secured Overnight Financing Rates (SOFR) as a LIBOR replacement, including an overview of the progress and hurdles to date. Topics covered included the development of SOFR as a benchmark; ARRC statements on SOFR; mechanics of SOFR; examples of SOFR offerings, CME term SOFR; and alternatives to SOFR.

[New IRS Audit Campaign Targets Credit Fund Loan Origination](#) | On September 2, Partners Mark Leeds and Russell Nance presented at the NYS Society of Certified Public Accountants TFI Committee Meeting.

[Best Practices for Earnings Calls and Investor Updates](#) |. Hosted by *Intelligize* on August 4, 2021, Mayer Brown’s David Freed and Laura Richman addressed materiality and when an issuer has a duty to disclose, trend information and earnings guidance, non-GAAP financial measures and KPIs, forward-looking statements and cautionary statements, SEC guidance related to COVID-19, and financings after earnings announcements and before quarterly reports are filed.



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